

United States Government may be engaged in the activity of operating a railroad, operating a railroad is not a non-profit activity.

(4) *Governmental functions.* Governmental functions are not commercial activities. The term “governmental functions” shall be determined under U.S. standards. In general, activities performed for the general public with respect to the common welfare or which relate to the administration of some phase of government will be considered governmental functions. For example, the operation of libraries, toll bridges, or local transportation services and activities substantially equivalent to the Federal Aviation Authority, Interstate Commerce Commission, or United States Postal Service will all be considered governmental functions for purposes of this section.

(5) *Purchasing.* The mere purchasing of goods for the use of a foreign government is not a commercial activity.

[T.D. 8211, 53 FR 24063, June 27, 1988]

#### § 1.892-5 Controlled commercial entity.

(a)-(a)(2) [Reserved]. For further information, see § 1.892-5T(a) through (a)(2).

(3) For purposes of section 892(a)(2)(B), the term *entity* means and includes a corporation, a partnership, a trust (including a pension trust described in § 1.892-2T(c)) and an estate.

(4) *Effective date.* This section applies on or after January 14, 2002. See § 1.892-5T(a) for the rules that apply before January 14, 2002.

(b)-(d) [Reserved]. For further information, see §§ 1.892-5T(b) through (d).

[T.D. 9012, 67 FR 49864, Aug. 1, 2002]

#### § 1.892-5T Controlled commercial entity (temporary regulations).

(a) *In general.* The exemption generally applicable to a foreign government (as defined in § 1.892-2T) for income described in § 1.892-3T does not apply to income received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity. The term “controlled commercial entity” means any entity engaged in commercial activities as defined in § 1.892-4T (whether

conducted within or outside the United States) if the government—

(1) Holds (directly or indirectly) any interest in such entity which (by value or voting power) is 50 percent or more of the total of such interests in such entity, or

(2) Holds (directly or indirectly) a sufficient interest (by value or voting power) or any other interest in such entity which provides the foreign government with effective practical control of such entity.

(3) [Reserved]. For further information, see § 1.892-5(a)(3).

(b) Entities treated as engaged in commercial activity—(1) *U.S. real property holding corporations.* A United States real property holding corporation, as defined in section 897(c)(2) or a foreign corporation that would be a United States real property holding corporation if it was a United States corporation, shall be treated as engaged in commercial activity and, therefore, is a controlled commercial entity if the requirements of paragraph (a)(1) or (a)(2) of this section are satisfied.

(2) *Central banks.* Notwithstanding paragraph (a) of this section, a central bank of issue (as defined in § 1.895-1(b)) shall be treated as a controlled commercial entity only if it engages in commercial activities within the United States.

(3) *Pension trusts.* A pension trust, described in § 1.892-2T(c), which engages in commercial activities within or outside the United States, shall be treated as a controlled commercial entity. Income derived by such a pension trust is not income of a foreign government for purposes of the exemption from taxation provided in section 892. A pension trust described in § 1.892-2T(c) shall not be treated as a controlled commercial entity if such trust solely earns income which would not be unrelated business taxable income (as defined in section 512(a)(1)) if the trust were a qualified trust described in section 401(a). However, only income derived by a pension trust that is described in § 1.892-3T and which is not from commercial activities as defined in § 1.892-4T is exempt from taxation under section 892.